

April 9, 2003

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E9700070**

EVERT VELDHUIZEN
Code Enforcement Appeal

Location: 23620 SE 436th Street

Appellant: **Evert Veldhuizen**
22819 SE 380th
Enumclaw, WA 98022
Telephone: (360) 825-0662

King County: Department of Development and Environmental Services
represented by **DenoBi Olegba**
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 205-1528
Facsimile: (206) 206-6604

EXAMINER PROCEEDINGS:

Hearing Opened: April 3, 2003
Hearing Closed: April 3, 2003

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

SUMMARY:

Denies code enforcement appeal regarding demolition and construction without permits; failure to obtain final inspection approval; operation of a retail business in a residential zone. Grants appeal regarding travel trailer occupancy and unenclosed storage of inoperable vehicles.

FINDINGS:

1. On January 17, 2003 the Department of Development and Environmental Services (“Department” or “DDES”), served upon Evert and Renee Veldhuizen (“Appellant”) a notice of King County code violation; civil penalty order; abatement order; notice of lien (“notice and order”).
2. The subject property, King County Assessor Parcel No. 2220069057¹ is zoned UR. The UR (urban reserve) zone is a residential zone which limits the use of land principally to single-family detached residential uses. KCC 21A.080.030.
3. The notice and order cites the Appellant for the following:
 - A. Remodel and construction of a residence and garage together with occupancy of the garage without required permits, inspections and approvals in violation of KCC 16.04 and KCC 21A.28; Uniform Building Code (UBC) section 106.1, RCW 19.27.020, --.031, --.040 and --.074; and, Washington Administrative Code (“WAC”) 51-40-003.
 - B. Construction, occupancy and operation of an espresso stand which is not allowed in a UR zone, in violation of KCC 16.04, KCC 21A.08.070.A, KCC 21A.28; UCB 106.1; RCW 19.27.020, --.031, --.040, and --.074; and, WAC 51-40-003.
 - C. Occupancy of a substandard housing (travel trailer), in violation of KCC 16.04 and Uniform Housing Code (“UHC”) Chapter 10.
 - D. Storage of inoperable vehicles in a structure that is not enclosed and accumulation of construction debris in violation of KCC 21A.32.230 and KCC 23.10; and, UHC, Chapter 4.
1. The notice and order requires the Appellant to comply with the following before February 18, 2003:

Either apply for and obtain required construction/remodel permits, inspections and approvals; or, cease occupancy of the garage and close the house and garage to entry.

That compliance deadline has been stayed by the appeal.
5. Photographs contained in exhibit nos. 5-5g document the following:
 - A. An older home which has been raised to accommodate a new foundation, stripped of siding, stripped of wall surfacing (tongue and groove wainscoting, according to the Appellant). New pressboard exterior panels have been installed. Residential demolition and construction debris has accumulated. Code Enforcement Supervisor Elizabeth Deraitus first noticed on November 20, 1997 that the house had been raised off its foundation.

¹ S264FT of W495FT of NW QTR of NE QTR, less county road, less state road.

- B. A large relatively new blue garage/storage building is situated on the property. It contains a lift truck or fork lift, and several cars, some of which are older vintage. The Appellant and the Department disagree as to whether the building has doors and the record contains no determinative evidence to support either point of view. Three large metal tanks lay on the ground beside the garage/storage building.
 - C. The property hosts a travel trailer. Code Enforcement Officer Olegba testifies that he has observed “signs of occupancy,” but those signs are not elucidated in the hearing record. The Appellant testifies that the travel trailer is not occupied, that he uses it for work breaks.
 - D. A drive thru espresso stand named “Oasis” or “Oasis Espresso” is located on the property within its frontage along Southeast 436th Street. The Appellant appears to believe that the espresso stand is not his problem because he is the landlord, not the tenant. Ignoring the fact that the UR zoning classification prohibits eating and drinking establishments, he argues that the espresso stand has obtained all necessary permits, “except one.”
 - E. Construction and demolition debris is stored beside the house undergoing remodel.
- 6. The Appellant takes umbrage from the Code Enforcement Officer’s visits to the property, which he considers a violation of privacy. The property is neither posted nor gated. The photographs taken by the Code Enforcement Officer, even those which show the interiors of the stripped house shell and the garage/storage building, were taken from a broad and open driveway that is impliedly open to the public. In fact, the operation of the espresso stand encourages public access to the property. The record contains no evidence that the Code Enforcement Officer entered any building or structure.
 - 7. The Appellant obtained DDES permit B97A1691 for the detached storage/garage, but has never received final inspection approval. That permit has expired. The Appellant testifies that he has made numerous permit fee payments and that his permits have been “signed off” by the Department. The hearing record contains no evidence to support this testimony.
 - 8. DDES File No. A98M0330 shows that the Appellant sought a pre-application review meeting for remodeling the house. However, neither this hearing record nor the Department has any evidence that any building permit was ever applied for. The Appellant argues that no permit should be required because the work is minor. The photographs contained in exhibit no. 5c and 5d contradict that testimony. See finding no. 5.A above.
 - 9. The Appellant expresses in his testimony the point of view that either the Code Enforcement officer and/or the Department is picking on him unfairly.
 - 10. In his testimony, Code Enforcement Officer Olegba amended the first sentence of the Department’s conclusions contained in its report to the Hearing Examiner (exhibit no. 1) to read as follows:

This is a 1997 case with no movement over the six years of its opening. Clearing the Appellant has displayed ((~~to~~)) no attempt at complying with King County codes.

In all other regards, exhibit no. 1 is found accurate. It is adopted and incorporated in this finding.

CONCLUSIONS

1. Espresso stands are prohibited in residential zones. The Appellant, as owner of the subject property, is responsible for compliance with zoning law. The espresso stand should be closed and removed from the property immediately.
2. We are not concerned with the fact that the garage/storage building may not be fully enclosed. It appears to be well constructed and to be an appropriate building to house old vehicles. Whether the inoperable vehicles are stored in an “enclosed” location is a matter of judgment. With or without doors, we conclude that the vehicle storage within that structure will be legally acceptable once the Appellant has obtained final inspection approval for the building. However, the fact that final inspection has not been obtained is problematic. Final inspection approval should be obtained promptly.
3. The preponderance of evidence in this hearing, including the testimony of the Appellant and the Code Enforcement officer, overwhelmingly support the conclusion that the house on the property is undergoing an extensive remodel. The photographs in evidence reveal that construction work has made it little more than an empty shell. Moreover, it obviously has been raised for foundation work as indicated by Officer Deraitus, Officer Olegba and the photographs in evidence. If the appropriate permits are not obtained timely, it should be demolished.
4. The new construction debris shown in exhibit no. 5b and the demolition debris shown in exhibit 5g would be acceptable on a temporary basis presuming that valid and currently effective permits were held by the Appellant. Such is not the case here. Clean it up and get the permits.
5. We are unable to find in this hearing record a preponderance of evidence that the travel trailer is “occupied.”

DECISION:

- A. Regarding remodel and construction of a residence and garage together with occupancy of the garage without required permits, inspections and approvals, the appeal is DENIED.
- B. Regarding the construction, occupancy and operation of an espresso stand in the residential UR zoning classification, the appeal is DENIED.
- C. Regarding occupancy of a travel trailer, the appeal is GRANTED.
- D. Regarding storage of inoperable vehicles and a structure that is not enclosed, the appeal is GRANTED. See however paragraph A of this decision, which denies the appeal regarding occupancy of the garage without required final inspection approval.
- E. Regarding accumulation of construction debris, the appeal is DENIED because there are no currently effective construction permits applicable to this property.

ORDER:

- A. Appellant Veldhuizen shall apply for all required permits related to the residential remodel, including raising of the structure and foundation construction, no later than **June 30, 2003** or shall incur a civil penalty of \$65 per day for the first 30 days, then \$130 per day for each day until the structure is demolished* or required permits are in fact obtained.
- B. Appellant Veldhuizen shall request final inspection approval and pay all permitting fees and inspection fees due for the garage/storage building no later than **June 2, 2003** or shall incur a civil penalty of \$65 per day for the first 30 days then \$130 per day for each day thereafter until the building is either demolished* or final inspection approval is obtained.
- C. The espresso stand shall be entirely removed from the subject Veldhuizen property no later than **May 9, 2003**, or the Appellant shall incur a civil penalty of \$80 per day for the first 30 days, then \$160 per day for each day thereafter until the entire espresso business is removed from the property.
- D. Vehicles stored in the blue garage/storage building may remain in place until final inspection approval is obtained, provided that it is obtained consistent with the schedule required by paragraph B of this order. Following **June 2, 2003**, if final inspection approval for the garage/storage building has not been obtained, the Appellant shall incur a civil penalty of \$35 per day for the first 30 days, then \$70 per day for each day thereafter until the building and vehicles are removed.
- E. Construction debris on the property may remain upon the property provided that all required residential remodel permits are obtained in timely manner as required by paragraph A of this order. Following **June 30, 2003**, if the required remodel permit applications are not then filed, Appellant Veldhuizen shall be subject to a civil penalty of \$30 per day for the first 30 days, then \$70 per day for each day thereafter until either the construction debris is removed or the permit application is filed.
- F. Through the duration of all construction activity on the property the Appellant shall maintain all permits current. From the date any permit expires the Appellant shall incur a civil penalty of \$65 per day for the first 30 days, then \$130 per day for each day thereafter until the necessary permit renewal fees are paid.
- G. Except as modified by paragraphs A through F of this order, the January 17, 2003 notice and order is fully reinstated. That notice and order provides for periodic billing, assessment of enforcement costs which exceed the amount of penalties, criminal misdemeanor provisions, and abatement.
- H. Nothing in this order shall be construed as limiting the authority of the Department or the King County Prosecuting Attorney to prosecute this manner in any manner otherwise provided by applicable law.

* The Department may, at its discretion, accept securing closure to all entry (such as “boarding up”) in lieu of demolition.

ORDERED this 9th day of April, 2003.

T. T. Titus, Deputy
King County Hearing Examiner

TRANSMITTED this 9th day of April, 2003, by certified mail to:

Evert Veldhuizen
22819 SE 380th
Enumclaw, WA 98022

TRANSMITTED this 9th day of April, 2003, to the following parties and interested persons:

Evert Veldhuizen
22819 SE 380th
Enumclaw WA 98022

Elizabeth Deraitus
DDES/BSD
Code Enf. Supvr.
MS OAK-DE-0100

Patricia Malone
DDES
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Heather Staines
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MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

The action of the hearing examiner on this matter shall be final and conclusive unless a proceeding for review pursuant to the Land Use Petition Act is commenced by filing a land use petition in the Superior Court for King County and serving all necessary parties within twenty-one (21) days of the issuance of this decision.

MINUTES OF THE APRIL 4, 2003 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E9700070

T. T. Titus was the Hearing Examiner in this matter. Participating in the hearing were DenoBi Olegba, representing the Department; Evert Veldhuizen, the Appellant; and Rene Veldhuizen.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 DDES report to the Hearing Examiner dated March 20, 2003
- Exhibit No. 2 Copy of notice and order dated January 17, 2003
- Exhibit No. 3 Copy of notice and statement of appeal received February 4, 2003
- Exhibit No. 4 Copies of codes cited in the notice and order
- Exhibit No. 5 Photos (4) of subject property, undated
 - 5a Photos (4) of subject property dated 11-27-01
 - 5b Photos (6) of subject property, undated
 - 5c Photos (6) of subject property, undated
 - 5d Photos (6) of subject property, undated
 - 5e Not submitted
 - 5f Photos (4) of subject property, undated (w/exception of one dated 11-27-01)
 - 5g Photos (7) of subject property, undated
- Exhibit No. 6 Notes from permits plus